IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.8166 of 1995 & W.P.M.P.No.25506 of 2006

Dated: 17-10-2006

Between:

1. M. V. Naidu, S/o late Sri M. Padmanabham,
   aged about 41 years, r/o H.No.25-27,
   Subash Chandrabose Nagar, Shapoor Nagar,
   Hyderabad and two others.

... Petitioners

and

1. The Government of Andhra Pradesh,
   represented by its Secretary,
   Industries and Commerce (Hand Looms) Department,
   Secretariat, Hyderabad and three others.

...
Respondents

ORDER:

This writ petition is filed to quash the proceedings dated 31-03-1995 issued by the second respondent.

2. Facts, in brief, are that all the three petitioners were appointed as Boiler Operators in the Andhra Pradesh State Textiles Processing Cooperative Society Limited (APROS). On the factory being closed, the petitioners, who were in the supervisory cadre, were asked, by the impugned proceedings dated 31-03-2005, to work as

Packers/Attenders. Aggrieved by the fact that they were asked to discharge the functions attached to posts far below the post in which they were hitherto working,

the present writ petition is filed. This Court, by order in W.P.M.P.No.10218 of 1995 dated 24-04-1995, suspended the impugned proceedings dated

31-03-1995. On a vacate stay petition being filed by the respondents, this Court, by order in W.P.M.P.No.10218 of 1995 & W.V.M.P. No.1020 of 1995 dated 30-06-1995, took note of the specific averment in the counter affidavit, and the submissions of the learned Standing Counsel, that the Factory of APROS, in which the petitioners were working earlier, was not functioning. This Court noted the assurance given by the respondents, and their Counsel, that for the present the petitioners would be paid the salary they were drawing in the second respondent company as on

31-03-1995 and that their claims for revision of pay scales would be considered in accordance with the circulars issued from time to time,

as expeditiously as possible. Aggrieved by that order, the petitioners herein carried the matter in appeal and the Division Bench of this Court,

in W.A.No.709 of 1995 dated 13-07-1995, took note of the submissions made on behalf of respondent Nos.2 to 4 that the petitioners-appellants shall be protected in their emoluments and status and shall not be denied their right as employees under them and shall not be made to work lower in grade than what they had held with their previous employer. In view of their undertaking, the Division Bench held that the respondents would protect the interests of the petitioners-appellants and shall be in no way arbitrary or discriminatory and if anything was done which was not in accordance with the undertaking given, the employer would be bound to undo the same and put the petitioners-appellants in such positions, which did not conflict the

undertaking. The Division Bench affirmed the order of the learned Single Judge in the light of the undertaking of the employers and clarified that the undertaking shall be treated as part of the order of the learned Single Judge. The petitioners herein filed C.C.No.55 of 1995 for non-compliance of the orders of the Division Bench. During the pendency of the contempt case, the respondents herein issued proceedings dated 10-10-1995 cancelling the order dated 31-03-1995 which was impugned in the writ petition. In the said order dated 10-10-1995 it was also stated that, in view of the orders passed in W.A.No.709 of 1995 dated 13-07-1995 of the Division Bench and as per the undertaking given by the Standing Counsel representing the respondents, the petitioners were being posted as In-charge Sales Emporium under the DMO, Rajahmundry. The DMO Rajahmundry was requested to keep their pay and emoluments as were drawn by them in APROS as on 31-03-1995 pending fixation of their cadre and scales of pay in APCO as per the byelaws of the APCO Society.

3. Sri N. Rajeswara Rao, learned Standing Counsel for the respondents would submit that since the impugned order dated 31-03-1995 has been cancelled in proceedings dated 10-10-1995, the cause of action in the writ petition does not survive and the writ petition is liable to be dismissed as *infructuous.* Learned Standing Counsel would further submit that, since petitioner Nos.2 and 3 had sought voluntary retirement, were permitted to retire voluntarily from service and have been paid all the emoluments due to them under the Voluntary Retirement Scheme, it is only the first petitioner who continues to serve the respondent Society.

4. Sri K. Ramesh Babu, learned Counsel for the petitioners, would submit that subsequent to the order of this Court dated 27-03-2006 dismissing the writ petition for non-prosecution, the respondents had

issued proceedings dated 11-09-2006 directing the first petitioner to remit the salary paid to him for the period from 01-04-1995 to 15-10-1995.

Learned Counsel would further submit that the action of the respondents in now seeking to recover the salary paid to the first petitioner for the aforesaid six months period was clearly an act of victimization on their part. Sri N. Rajeswara Rao, learned Standing Counsel, would submit that the proceedings dated 11-09-2006 constitutes a distinct cause of action for which a separate writ petition is required to be filed.

5. I am not impressed with the technical objection raised by the learned Standing Counsel. The fact remains that the first petitioner, who was working as a Boiler Operator, was asked to discharge the functions of a Packer/Attender, which is five grades below the cadre of Boiler Operator. During the pendency of the writ petition, and in view of the interim order of suspension, the respondents seem to have paid salary from 01-04-1995 to 15-10-1995 as salary advance and it is only after the impugned proceedings dated 10-10-1995 was passed, withdrawing the earlier proceedings dated 31-03-1995, that the salary for the subsequent period i.e. after 15-10-1995 was treated as regular salary. It is required to be noted that the impugned proceedings dated 31-03-1995 were suspended by this Court in its order dated 24-04-1995 and the subsequent modification, and the order in appeal, required the respondents to protect the salary and other emoluments of the petitioners herein. On the threat of contempt, the respondents had cancelled the impugned order dated 31-03-1995. The impugned order dated 31-03-1995, on its cancellation, must be deemed not to have ever been in existence and there is no justification, therefore, for the respondents to seek recovery of the salary paid to the first petitioner from 01-04-1995 till 15-10-1995

i.e., till the impugned proceedings dated 31-03-1995 were cancelled on 10-10-1995.

6. W.P.M.P.No.25506 of 2006 has been filed to stay all further proceedings pursuant to the third respondent's Memo.Ref.No.Admn.1(2) CO/M.V.Naidu/ W.P.8166/95/06/3905 dated 11-09-2006 and, since the respondents are hereby directed not to recover the salary paid for the period from 01-04-1995 till 15-10-1995, no order is required to be passed in W.P.M.P.No.25506 of 2006.

7. Both the writ petition and W.P.M.P.No.25506 of 2006 are disposed of accordingly. However, in the circumstances, without costs.

_____

JUSTICE RAMESH RANGANATHAN

Dt.17-10-2006
GLV